Applying the Procurement Standards in the Summer Food Service Program

Summer Food Rocks!

Sandra Foss & Courtney Haueter

USDA

Applying the Procurement Standards – Summer Foods Service Program (SFSP)

- Procurement standards
  - Program Regulations
  - Government-wide Regulations
- Applying the Standards
  - Soliciting bids/offers using all methods
  - Awarding contracts, as applicable
- Procurement Monitoring
  - What to look for?

USDA

Applying the Procurement Standards - SFSP

- **Program Regulations:**

  7 CFR 225 – Summer Food Service Program

  7 CFR 250 – Subpart D: Donated Foods in Food Service Management Company Contracts

USDA

Applying the Procurement Standards - SFSP

Program Regulations:

- **7 CFR 225.17 – Summer Food Service Program**
  - Written procurement procedures (also in 2 CFR Part 200.318(a))
  - Bond requirements for FSMCs
  - Minority business enterprises (also in 2 CFR Part 200.321)
  - Geographic preference, as applicable
- **7 CFR Part 250.53 – Donated Foods in Food Service Management Company Contracts**
  - Fixed-price contracts
  - Cost-reimbursable contracts

USDA

Applying the Procurement Standards - SFSP

* **Written procurement procedures**
  - Obtained efficiently and economically
  - Comply with Federal, State, and local
  - Prevent fraud, waste, and abuse
* **Bond requirements for FSMCs**
  - Requirements found in regulations at 7 CFR 225.15(m)(5-7)

USDA

Applying the Procurement Standards - SFSP

* **Minority Business Enterprises**
  - Including them on solicitation lists,
  - Soliciting them whenever they are potential sources,
  - Dividing requirements into smaller tasks/quantities for maximum participation, when feasible,
  - Establishing schedules to assist them with meeting deadlines, and
  - Using the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce as required.

USDA

Applying the Procurement Standards - SFSP

* **Geographic preference**

- Program operators, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products
- This means agricultural products that retain their inherent character.

--Further information can be found within the program regulations

USDA

Procurement Standards (*geographic preference cont.*)

- Applying Geographic preference- evaluation for contract award

  -SFAs, or a State agency purchasing on behalf of SFA, have the discretion to determine the local area to which this option will be applied

- **SP18 – 2011, *Procurement Geographic Preference Q&As*, dated February 1, 2011**

  -Solicitation must clearly outline how responses will be evaluated and scored, including any geographic preference.

USDA

Procurement Standards in SFSP (*Required Contract provisions* - donated Foods in FSMC contracts)

- 7 CFR Part 250.53(a-b)

  (a) Required contract provisions in fixed-price contracts and procurement documents

  - ***12 required contract provisions regarding crediting of USDA Foods***

  (b) Required contract provisions in cost-reimbursable contracts

  - Same **12** as in (a) above, **plus:** a statement that the food service management company will ensure that its system of inventory management will not result in the recipient agency being charged for donated foods.

USDA

Procurement Standards in SFSP

Program Specific Procurement Standards

Programs	Buy American	Cost-reimbursable Contract Provisions	Geographic Preference	Minority Business Enterprises
NSLP and SBP	7 CFR Parts 210.21(d) and 220.16(d)	7 CFR Parts 210.21(f), 220.16(e), and 250.53	7 CFR Part 210.21(g) and 220.16(f)	
SMP	-	7 CFR Part 215.14a(d)	7 CFR Part 215.14a(e)	
SFSP	-	-	7 CFR Part 225.17(e)	7 CFR Part 225.17(d)
CACFP	-	-	7 CFR Part 226.22(n)	7 CFR Part 226.22(f)
Donated Foods	7 CFR Part 250.23	7 CFR Part 250.53(b)		

Applying the Procurement Standards - SFSP

Government-wide Regulations: 2 CFR Parts 200.317-326

http://www.ecfr.gov

Title 2 – Grants and Agreements

Chapter II –200-299 Office of Management and Budget Guidance

Part 200 – UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

USDA

Applying the Procurement Standards - SFSP

- Government-wide Regulations:

2 CFR Sections 200.318-326:

§ 200.318 : General procurement standards

§ 200.319: Competition

§ 200.320: Procurement Methods

§ 200.321: Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

§ 200.322: Procurement of recovered materials

§ 200.323: Contract cost and price

§ 200.324: Federal awarding agency or pass-through entity review

§ 200.326: Contract provisions

USDA

Applying the Procurement Standards - SFSP

- **2 CFR Part 200.318 General procurement standards**

(a) Documented procurement procedures
(b) Oversight of contractor performance
(c) Written standards of conduct
(d) Avoid unnecessary or duplicative items
- Consider consolidating/breaking-out procurements for more economy

(e) Intergovernmental/inter-entity agreements
(f) Use excess/surplus in lieu of new
(h) Award contracts to responsible contractors
(i) Maintain records
(j) Time and material type contracts
(k) Settlement of contract issues

USDA

Applying the Procurement Standards - SFSP

- **2 CFR Part 200.318: A closer look**

  (a) Documented procurement procedures

  - Reflect Federal, State and local laws and regulations conforming to Federal

  (b) Oversight of contractor performance (*more to come later*)

USDA

Applying the Procurement Standards - SFSP

- **2 CFR Part 200.318: A closer look**

(c) Written standards of conduct that:

- Prohibits real, or apparent conflicts of interest
  - -- Covers employees, officer, or agent engaged in the selection, award, and administration of contract
  - -- No financial/other interest in, or a tangible personal benefit from, a contract
- Prohibits soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties to subcontracts
  - -- May have standards for situations when gifts are not substantial, or gift is unsolicited and of nominal value
- Includes disciplinary actions to be applied for violations

USDA

Applying the Procurement Standards - SFSP

- **2 CFR Part 200.318: A closer look**

(d) Avoid unnecessary or duplicative items

- Consider consolidating or breaking out procurements for more economical purchases

(e) Intergovernmental/inter-entity agreements

- Promotes use of common or shared goods and services
- Agreement does not replace competitive procurement methods
  - -- Competitive procurement methods must still be conducted
- If "piggybacking" the agreement needs to include provisions on extending contracts to other parties. To avoid a material change consider including specifics on the # of parties and dollar value at which a rebid needs to occur.

(f) Use excess and surplus in lieu of purchasing new

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.318: A closer look

- Award contracts to responsible contractors
  - -- Able to perform terms and conditions successfully
  - -- Contractor integrity, compliance with public policy
  - -- Record of past performance
  - -- Financial and technical resources
- Maintain records to detail the history of the procurement
- Time and material type contracts
- Settlement of contract issues
  - -- Evaluation/protests/disputes/claims are the responsibility of the entity conducting the procurement

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.319 – Competition

- All transactions requires full and open competition
  - -- Identifies situations considered to be restrictive of competition
- Prohibits statutorily/administratively imposed state or local geographic preferences
- Written procedures for procurements
  - -- Clear and accurate descriptions without restricting competition,
  - -- Identify all requirements and evaluation factors, and
- Prequalified lists, maximum open and free competition, must allow qualifying during solicitation period

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.319 Competition

Full and open competition required

Situations considered to be restrictive of competition include:

* UNREASONABLE REQUIREMENTS
* UNNECESSARY EXPERIENCE AND EXCESSIVE BONDING
* NONCOMPETITIVY PRICING
* NONCOMPETITIVE RETAINED-CONSULTANT CONTRACTS
* ORGANIZATIONAL CONFLICTS OF INTEREST
* BRAND NAMING
* ARBITRARY ACTIONS

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.320 Procurement Methods

(a) Micro-purchase

(b) Small purchase procedures

(c) Sealed bids

(d) Competitive Proposals

(f) Noncompetitive proposals

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.320 Procurement Methods

-Micro-purchase

-- Aggregate transaction does not exceed $3,500
-- Distributed among qualified suppliers
-- No quotes required
-- Price must be reasonable

Applying the micro-purchase method:

* No purchase transaction may exceed $3,500
* Purchase from qualified sources equitably (*not just favorites*)
* Prices must be reasonable

USDA

Applying the Procurement Standards - SFSP

- Make a list of the food and supplies needed for meals
- What are the sources that carry the items needed?
- If prices are reasonable, purchase equitably among all by:
  - Purchasing from one source one week and a different source another week (keep transactions ~ the same $ value)
  - Divide transactions: one or more sources each purchase
  - Ensuring transactions are equitable may be burdensome
    - Some sources may not have the lowest price when needed
    - Use small purchase procedures and document prices

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.320 Procurement Methods

-**Small Purchase Procedures** ($3,500-$150,000 *or more restrictive threshold*)

-- Obtain quotes (may be email, catalogs, website, telephone, oral)

-- Documented

-- More than one source

Applying the small purchase method

* Obtain more than one price quote using:
  * Supplier website/catalogs for prices
    * Call/email suppliers for prices

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.320 Procurement Methods

Sealed Bids (Exceeds $150,000, or most restrictive threshold)

- Contract award
  - -- Firm fixed-price with/without cost adjustment tied to a standard index
  - -- Lowest responsive and responsible bidder
- Documents include a complete, adequate, and realistic specification/description
- 2 or more bidders available that are willing and able to compete
- Publicly advertised from a number of suppliers with sufficient response time for bid opening
- Public opening at time and place identified in document
- Bids may be rejected for sound documented reason

USDA

Applying the Procurement Standards - SFSP

Sealed Bids for FSMC contracts exceeding $150,000

* The IFB must include:
  - A cycle menu approved by the State agency.
  - Food specifications and meal quality standards.
  - A statement requiring compliance with SFSP regulations.
  - Nonfood items essential for conducting the food service.
  - Special meal requirements to meet ethnic or religious needs or dietary modifications for children with special physical or medical needs, only if these are necessary to meet the needs of the children to be served.
  - The location of the sponsor's sites and the estimated range of meals required.
* The IFB must NOT:
  - Specify a minimum price;
  - Provide for loans or any other monetary benefit, term, or condition to be made to sponsors by FSMCs; nor
  - Include nonfood items that are not essential to the conduct of food service.

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.320 Procurement Methods

Competitive Proposals

- More than one source submits an offer
-Contract award
  -- Either fixed-price or cost-reimbursable
- Used when sealed bid not appropriate
- Publicized with evaluation factors and relative importance
- Qualified sources (more than one)
- Written method of conducting technical evaluations included
-Awarded to responsible firm most advantageous to Program with price and other factors considered
  -- Price is primary *Procurement Questions*, dated July 14, 2005

USDA

Applying the Procurement Standards - SFSP

Required solicitation information for SFSP:

* Site information
* Cycle menu
* Meal requirements and reimbursable meals
* Quality control
* Unitized meals and meal delivery
* USDA foods
* Meal range adjustment
* Special accounts

USDA

Applying the Procurement Standards - SFSP

Additional FSMC requirements:

* Health certification and inspection
* State agency inspection and Administrative Reviews
* Records
* Subcontracts
* Contract responsibility and payment
* Required State agency approval of FSMC bids

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.320 Procurement Methods

Noncompetitive Proposal

- Procurement through solicitation of a proposal from only one source and many be used when:
  - -- Item only available from one source
  - -- Public exigency or emergency – delay not permitted
  - -- Authorized by FNS or State agency due to written request
  - -- After solicitation from a number of sources, competition is deemed inadequate

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.321 Small, minority and women's businesses and labor surplus firms

-When possible, affirmative steps must include:

(a) Inclusion on solicitation lists;

(b) Solicited when they are potential sources;

(c) Dividing total requirements, when economical feasible;

(d) Use Small Business Administration and Minority Business Development Agency; and

(e) Requiring prime contractor, in subcontracts, to use affirmative steps

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.323 Contract cost and price

- Applies when purchase exceeds the Simplified Acquisition Threshold, including contract modifications

  -- Independent estimates prior to receiving bids/proposals

  -- When no price competition, negotiate fair and reasonable profit with considerations identified

  -- Costs must be allowable under **Subpart E-Cost Principles**

  -- No cost plus a % of cost or % construction cost allowed

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.324 Federal awarding agency or pass-through entity review

Make proposed procurements available, upon request when:

- Procedures are noncompliant
- Contract modification changes scope of contract or increases the contract amount more than Simplified Acquisition Threshold
- Procurement exceeds Simplified Acquisition Threshold **AND**
  - --No competition is received,
  - -- "Brand name product" is specified, or
  - -- Award is to other than low bidder under a sealed bid.

USDA

Applying the Procurement Standards - SFSP

2 CFR Part 200.326 Contract provisions

- **Appendix II to Part 200**
  - Administrative/contractual/legal remedies -Exceeds $150K
  - Termination for cause & convenience - Exceeds $10K
  - Equal Employment Opportunity
  - Davis-Bacon Act – Exceeds $2K
  - Contract Work Hours/Safety Standards Act – Exceeds $100K
  - Rights to Inventions Made Under Contract
  - Clean Air Act – Exceeds $150K
  - Energy Policy and Conservation Act
  - Debarment and Suspension
  - Byrd Anti-Lobbying Amendment - Exceeds $100K
  - Recovered materials

USDA

Applying the Procurement
Standards - SFSP

(Contractor performance monitoring)

2 CFR Part 200.318(b)

- Occurs after contract is awarded
- Ensures contractors perform as required by terms, conditions, and specifications of contracts/POs
  - -- Is the product/price/quality as specified and quoted/bid?
  - -- Are deliveries as required?

USDA Foods

- Are USDA Foods credited to the nonprofit food service account?
  - -- Self-operations and FSMC contracts

USDA

Applying the Procurement Standards - SFSP

* **Purchasing Meals from Schools**
  - Strongly encourage sponsors to consider local SFA as source of obtaining meal service
  - May enter noncompetitive agreements to purchase meals
  - With prior State agency approval, use NSLP/SBP meal requirements
* **Purchasing Meals from FSMCs**
  - Must be competitively procured
  - If SFA is using an FSMC, determine whether SFSP meals may be included
  - Some responsibilities may not be contracted

USDA

Applying the Procurement Standards - SFSP

* **Local Procurement Strategies**
  - Defining Local
  - Sourcing Local Products
  - Methods of Procurement
  - Geographic Preference

USDA

Applying the Procurement Standards - SFSP

Summary

&

Questions

USDA